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8 Appearing *Pro Hac Vice*

9
10 IN THE UNITED STATES DISTRICT COURT
11
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA
13
14 SAN FRANCISCO DIVISION

15 UNITED STATES OF AMERICA,

16 **Case No. 3:17-cr-00533-7 EMC**

17 Plaintiff,

18 v.
19
20 **CHRISTOPHER RANIERI'S REPLY TO THE
21 UNITED STATES' OPPOSITION TO HIS
22 MOTION FOR JUDGMENT OF
23 ACQUITTAL UNDER F.R.C.P. 29**

24 CHRISTOPHER RANIERI *et al.*,

25 Defendants.
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9	18 U.S.C. §1959(a)	5, 8, 9, 10, 11, 12, 13, 14 18
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11	18 U.S.C. § 1651(5)	29
12	18 U.S.C. §1962(d)	5, 6, 14, 27, 28
13		

14 **Rules**

15	Fed. R. Crim. P. 29	Passim
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1 **I. INTRODUCTION**

2 Cristopher Ranieri's motion for judgment of acquittal should be granted because there is
3 insufficient evidence to support his convictions.

4 To sustain Mr. Ranieri's conviction of conspiring to murder Mr. Silva under 18 U.S.C.
5 §1959(a), the evidence has to prove beyond a reasonable doubt that he was a member in the
6 charged enterprise whose purpose in conspiring was to retain or enhance his position in it or that
7 he conspired with that purpose to become a member of it. The evidence at trial does not
8 establish these essential facts. Despite §1959(a)'s plain language, the Government asserts formal
9 membership in a criminal enterprise is not required to be proven. The authority it relies on in
10 support of its "associate" proposition, however, is markedly distinct from our case and imposes
11 this theory of liability in circumstances in which defendants directly and significantly
12 participated in the affairs of the charged enterprise. That is not the case here. Nevertheless, the
13 evidence is insufficient to sustain his conviction that he conspired to murder Mr. Silva to
14 "preserve" his status within the charged enterprise as the Government maintains. His
15 connections to the enterprise are sporadic, social in nature, and non-culpable. Also, the evidence
16 based on the testimony of Joseph Hardisty, the only witness against him, is insufficient to
17 support his conviction because it is undermined by aspects of Mr. Hardisty's own testimony;
18 others' testimony and evidence; his testimony is uncorroborated in material respects; and as it
19 also is so inconsistent or improbable on its face that no reasonable fact finder could accept it.
20 Evidence other than Mr. Hardisty's testimony is also insufficient to sustain his conviction that he
21 agreed to murder Mr. Silva.

22 As for Mr. Ranieri's conviction under 18 U.S.C. §1962(d), the evidence is insufficient to
23 support an inference that he knowingly agreed to participate, directly or indirectly, in the conduct

1 of the charged enterprise's affairs through a pattern of racketeering. Again, his connections to the
 2 enterprise are sporadic, social in nature, and non-culpable. Given his lack of culpable
 3 connections to or involvement in the charged enterprise until the alleged conspiracy to murder
 4 Mr. Silva in June 2014 and his murder in July 2014, the evidence is insufficient to support his
 5 racketeering conviction premised on the acts associated with Mr. Ranieri's murder because those
 6 acts do not establish a threat of continued criminal activity necessary to prove the pattern of
 7 racketeering element required to proven, and sustain, a conviction under §1962(d). Also, in this
 8 vein, his conviction cannot be sustained on the basis of these acts since this case involves one
 9 conspiracy to murder and one murder and, consequently, is distinct from other authority. Also,
 10 as will be discussed below, the evidence is insufficient to support Mr. Ranieri's racketeering
 11 conviction based on purported acts not associated with Mr. Silva's murder which the
 12 Government raises in its *Opposition*.
 13

16 II. ARGUMENT

18 A. The Rule 29 Standard

19 Rule 29 permits the Court to enter a judgment of acquittal of any offense for which the
 20 evidence is insufficient to sustain a conviction. Fed. R. Crim. Pro. 29. See also, *United States v.*
 21 *Wong*, 2014 WL 923347, at *5 (N.D. Cal. 2014). Such a challenge is a two-step process. First,
 22 the Court must review the evidence at trial in the light most favorable to the prosecution.
 23 Second, the Court must determine whether the evidence, through this lens, is adequate to allow
 24 "any rational trier of fact [to find] the essential elements of the crime beyond a reasonable
 25 doubt." *Jackson v Virginia*, 443 U.S. 307, 319 (1979); See also, *U.S. v. Nevils*, 598 F.3d 1158,
 26 1164-67 (9th Cir. 2010) (en banc) (evidence is insufficient if, viewing the evidence in the light
 27
 28

1 most favorable to the prosecution, a rational trier of fact could not have found the elements of the
 2 crime beyond a reasonable doubt). *United States v. Nevils*, 598 F. 3d 1158, 1163 (9th Cir. 2010).

3 In its *Opposition* the Government does not offer a fulsome account of the Rule 29
 4 standard. (*Op. Doc.* 3633, pp. 4-6).

5 The Government, for instance, offers no insight as to the assessing the nature and
 6 reasonableness of inferences a trier of fact may draw from the evidence at trial in now
 7 determining whether that evidence is sufficient to sustain a conviction. (*Op. Doc.* 3633, pp. 4-
 8 6). See, e.g., *Jackson*, at 319 (trier of fact has responsibility “to weigh the evidence and to draw
 9 reasonable inferences”); *Nevils*, at 1167 (evidence is insufficient to support a verdict where mere
 10 speculation, rather than reasonable inference, supports the government’s case); *United States v.*
 11 *Valle*, 807 F.3d 508, 515 (2d Cir. 2015) (“[S]pecious inferences [should] not [be] indulged,
 12 because it would not satisfy the Constitution to have a jury determine that the defendant is
 13 probably guilty.”); *United States v. Pauling*, 924 F.3d 649, 656 (2nd Cir. 2019) (an inference is
 14 not a suspicion or a guess. It is a reasoned, logical decision to conclude that a disputed fact exists
 15 on the basis of another fact that is known to exist); *United States v. Landesman*, 17 F.4th 298,
 16 320 (2d Cir. 2021) (where a fact to be proved is also an element of the offense it is not enough
 17 that the inferences in the government’s favor are permissible, but rather, the Court must also be
 18 satisfied that the inferences are sufficiently supported to permit a rational juror to find that the
 19 element, like all elements, is established beyond a reasonable doubt). Also, if the evidence
 20 viewed in the light most favorable to the prosecution gives equal or nearly equal circumstantial
 21 support to a theory of guilt and a theory of innocence, then a reasonable jury must necessarily
 22 entertain a reasonable doubt. *Id.*

1 Furthermore, as to assessing testimonial evidence at this stage, the Court can conclude
 2 that such evidence is insufficient to sustain a conviction if it is "so inconsistent or improbable on
 3 its face that no reasonable fact finder could accept it. See, e.g., *United States v. Croft*, 124 F.3d
 4 1109, 1125 (9th Cir. 1997); *United States v. Tam*, 240 F.3d 797 (9th Cir. 2001); *United States v.*
 5 *Williams*, No. CR 13-0764 WHO, 2018 WL 2724337, at *7 (N.D. Cal. Jun. 6, 2018).

6 Finally, the Government inaptly claims, citing to *Nevils*, 598 F.3d at 1167, that "...
 7 granting a motion of acquittal is necessarily rare". *Op.*, p. 6. Conversely, its citation to that page
 8 of the *Nevils* illustrates when the Government's cases may fail under the Rule 29 standard.
 9
 10 *Nevils*, 598 F.3d at 1167 (evidence, construed in favor of the government "may still be so
 11 supportive of innocence that no rational juror could conclude that the government proved its case
 12 beyond a reasonable doubt.").

13 While the standards for granting a Rule 29 motion are demanding, they are not, as
 14 suggested by the Government, impossible to meet. Here, the evidence before the Court as to Mr.
 15 Ranieri demonstrates that his is a case in which the entry of a judgment of acquittal is necessary
 16 and warranted.

17 **B. Mr. Ranieri's Conviction That He Conspired to Murder Joel Silva in Aid of
 18 Racketeering Under 18 U.S.C. §1959(a) is Not Supported by Sufficient Evidence**

19 The Government asserts the sufficient evidence of Mr. Ranieri's VICAR agreement to
 20 murder Mr. Silva consists of testimony Joseph Hardisty, *Op.*, pp. 6-8; and other evidence which
 21 "...completely supports the details that Hardisty provided...", *Id.*, p.8. According to the
 22 Government this latter evidence consists of CAST evidence, *Id.*, pp. 8-9; call details records
 23 which show "a high volume of communications between Ranieri and Nelson and Ranieri and
 24 Wendt on the day Silva was killed" *Id.*, pp. 9-12; witness testimony that purportedly supports
 25 both Mr. Hardisty's testimony and Mr. Ranieri's liability for Silva's death, *Id.*, pp. 12-15; that

1 Mr. Ranieri left a Filthy Few patch at the Sonoma Clubhouse after a party, *Id.* p. 15; and,
 2 testimony Mr. Silva threatened Mr. Sweeney because he was proud to have had the “81” pendant
 3 or chain and became angry towards Mr. Sweeney when he no longer had it. *Id.*, p. 16.
 4

5 The Government contends Mr. Ranieri’s conviction of VICAR conspiracy to murder Mr.
 6 Silva is supported by sufficient evidence because Mr. Ranieri had “status within” HASC, which
 7 expected its members and associates to violently react to perceived disrespect; as Mr. Silva’s
 8 threat to kill Christopher Sweeney was disrespectful to Mr. Ranieri who, therefore, reacted to it
 9 by agreeing that Mr. Silva should be murdered; and since Mr. Ranieri’s substantial purpose of
 10 his supposed agreement was to preserve his “status within” the HASC. *Op.*, p. 27; pp. 16-27.
 11

12 The Court should grant Mr. Ranieri’s motion despite the Government’s claims because,
 13 as discussed below, his conviction that he conspired to murder Mr. Silva in aid of racketeering is
 14 not supported by sufficient evidence.
 15

16 **1. The Evidence is Insufficient to Support Mr. Ranieri’s Conviction
 17 Because There Was No Evidence That He Was a Member of The
 18 Charged Enterprise or That His Purpose to Commit The Charged
 19 Crime Was to “Maintain or Increase His Position” in That Enterprise
 20 And as There Was No Evidence That He Aspired to Become a
 21 Member of The Charged Enterprise**

22 The evidence establishes that Mr. Ranieri was a member of the Salem, Massachusetts
 23 chapter of the Hells Angels, and not the charged HASC enterprise. Nonetheless, the
 24 Government contends there is “... no requirement of formal membership in a criminal enterprise
 25 for VICAR liability....[and] [a]ssociates of a criminal enterprise, like Ranieri, can still be
 26 convicted under RICO. *See, e.g., United States v. Fernandez*, 388 F. 3d 1199 (9th Cir. 2004).”
 27 *Op.*, p. 16. It then asserts that there is sufficient evidence to sustain his conviction of the
 28 VICAR conspiracy to murder Mr. Silva because he, Mr. Ranieri, had “status within” the charged
 enterprise. *Op.*, p. 16; pp. 16-27.

1 However, a plain reading of §1959(a)'s purposes prong¹ means that to convict Mr. Ranieri
 2 of this charge, the evidence must sufficiently establish beyond a reasonable doubt that *he was a*
 3 *member in the HASC enterprise and conspired to murder Mr. Silva with the motive, purposes, or*
 4 *intent of retaining or enhancing his position in that enterprise.* Also, the Court instructed the
 5 jurors in its final instructions in harmony with the plain language of §1959(a)'s purposes prong.²

6 Section 1959(a)'s purposes or motive requirement is no mere technicality. As the Second
 7 Circuit explained in *Concepcion*, Congress "included" the requirement "as a means of
 8 proscribing murder and other violent crimes committed '*as an integral aspect of membership' in*
 9 *such enterprises.*'" *United States v. Concepcion*, 983 F.3d 369, 381 (2d Cir. 1992) (quoting S.
 10 Rep. No. 98-225, at 304 (1983) (the evidence must support an inference that "the defendant
 11 committed his violent crime because he knew it was expected of him *by reason of his*
 12 *membership in the racketeering enterprise or that he committed it in furtherance of that*
 13 *membership.*") Thus, there must be sufficient evidence that Mr. Ranieri's alleged "gang-related

17 ¹ As relevant here, 18 U.S.C. §1959(a) provides that:

18 Whoever, or for the purpose of gaining entrance to or maintaining or
 19 increasing position in an enterprise engaged in racketeering activity, murders,
 20 ... or conspires so to do, shall be punished...

21 ² As to this element, the Court instructed the jury that:

22 Fourth, the defendant's purpose in conspiring to commit murder was to *gain*
 23 *entrance to or maintain or increase his position in the HASC enterprise.* It is
 24 not necessary for the Government to prove that this motive was the sole purpose
 25 or even the primary purpose of the defendant in committing the charged crime.

26 *You need only find that gaining entrance to or maintaining or increasing his*
 27 *position in the enterprise was a substantial purpose of the defendant or that he*
 28 *committed the charged crime as an integral aspect of membership in the*
enterprise.

As -- an incidental motivation, however, is not enough....

R.T. 6608.

1 purpose" must "be more than merely incidental: It must be within his 'general' purpose, or, in
 2 the alternative, the violence committed must be in some way 'integral' to the defendant's
 3 membership in the gang." *United States v. Banks*, 514 F.3d 959, 969 (9th Cir. 2008). See also,
 4 *United States v. Bracy*, 67 F.3d 1421, 1429 (9th Cir., 1995) (defendant *acted for the purpose of*
 5 *promoting his position in a racketeering enterprise*); *United States v. Pimentel*, 346 F.3d 285,
 6 295 (2d Cir. 2003) ("we have consistently held that "the motive requirement is satisfied if the
 7 jury could properly infer that the defendant committed his violent crime *because he knew it was*
 8 *expected of him by reason of his membership in the enterprise or that he committed it in*
 9 *furtherance of that membership*"); *United States v. Fiel*, 35 F.3d 997, 1004 (4th Cir. 1994) ("The
 10 legislative history indicates that the phrase was added to proscribe murder and other violent
 11 crimes committed 'as an integral aspect of membership' in such enterprises" (quoting S.Rep. No.
 12 225, at 304); *United States v. Ferguson*, 49 F. Supp. 2d 321, 327 (S.D.N.Y. 1999); *United States*
 13 *v. Ferguson*, 246 F.3d 129, 135-36 (2d Cir. 2001).

17 Despite the plain language of §1959(a)'s purposes prong and its settled parameters, as
 18 discussed immediately above, the Government offers *United States v. Fernandez*, 388 F. 3d 1199
 19 (9th Cir. 2004) in support of its assertion that there is no requirement of formal membership in a
 20 criminal enterprise for VICAR liability and associates of a criminal enterprise, like Ranieri, can
 21 still be convicted under RICO.

23 However, the Government finds no refuge in *Fernandez* to support its claim. There,
 24 defendant Roy Gavaldon argued that there was insufficient evidence at trial to support his
 25 conviction for participation in a racketeering conspiracy because he was not a member of the
 26 enterprise. The court found that although he was not a "member" of the Eme, i.e., did not have
 27 decision making authority within the group, this did not mean he did not conspire to participate

1 in the conduct or operation of the enterprise. *Fernandez*, 388 F. 3d at 1231. The court also
 2 found that as an Eme associate he managed the southeast Los Angeles gangs, was ordered to
 3 assault someone who had “burned” Eme members, and collected payments on behalf of Eme
 4 members, and, thus, he shared the liability of other individuals within the enterprise, even if he
 5 was not a leader within the group. *Id.*

7 Nor does the Government find refuge for its proposition in *United States v. Rodriguez*,
 8 971 F.3d 1005 (9th Cir., 2020). There, the court found Rodriguez served as “secretary” for the
 9 leader of a branch of the Eme and for her ex-husband who was a member of the Eme; in that
 10 capacity, she delivered messages among Eme members and their leadership teams, collected and
 11 disbursed “tax” money earned from extortion, and, ultimately, conspired to murder gang
 12 members who were deemed a threat to that leadership. *Id.*, p. 1008-09. Post conviction, she
 13 challenged the sufficiency of VICAR’s membership-purpose requirement. *Id.*, p. 1011.
 14
 15 Although not considered an official member of the Eme, the government presented sufficient
 16 expert and percipient testimony, as well as recorded conversations and seized correspondence, to
 17 establish that she served as an Eme secretary and facilitated acts of violence as a part of her role,
 18 and the conduct at the center of the VICAR count was inextricably tied to her position as
 19 secretary—principally, her dissemination of communications to direct the activities of her boss’s
 20 faction, including instructions to murder or otherwise inflict violence upon those who threatened
 21 him or people loyal to him. *Id.*

22
 23 *Fernandez’s* and *Rodriguez’s* impositions of “associate” liability, however, do not
 24 comport with the plain language of §1959(a)’s purposes prong nor with the authority analyzing it
 25 discussed above and in Mr. Ranieri’s opening memorandum. Furthermore, *Fernandez* and
 26 *Rodriguez* are factually distinct from our case. *In both of these cases the relevant defendants*

1 *directly and significantly participated in the affairs of the charged enterprise. That is not the*
 2 *case here as will be discussed in more detail below.*

3 Here, no reasonable juror could find that Mr. Ranieri's motivation for conspiring to
 4 murder Mr. Silva was to "maintain or increase his position" in the HASC enterprise because
 5 there was no evidence that he was a member of that enterprise. The Government presented no
 6 evidence against him, direct, or circumstantial, that established this essential element of
 7 §1959(a)'s membership-dependent prong. Nor did it ask the jury to find that he was a member
 8 of the HASC enterprise. Thus, it is impossible for any rational factfinder to convict him of this
 9 charge on that basis. The necessary, fundamental inferences to do so –membership in the HASC
 10 enterprise and a membership-dependent motive in the absence of evidence thereof in the face of
 11 evidence of non-culpable relations with members of the charged enterprise - are, therefore,
 12 irrational.

13 Likewise, no reasonable juror could find beyond a reasonable doubt that Mr. Ranieri
 14 conspired to murder Mr. Silva under §1959(a)'s "seeking to gain entry" prong. The utter lack of
 15 aspirational evidence here prevents reasonable jurors from making the rational inferences
 16 required to convict him of this charge on this basis.

17 **2. The Evidence is Insufficient to Support Mr. Ranieri's Conviction**
 18 **Based on The Government's Claim That He Conspired to Murder**
 19 **Mr. Silva to Preserve His "Status Within" The Charged Enterprise**

20 As noted above, the Government maintains that Mr. Ranieri's conviction of conspiring to
 21 murder Mr. Silva is supported by sufficient evidence since Mr. Ranieri had "status within" the
 22 HASC; Mr. Silva's threat to kill Mr. Sweeney was disrespectful to Mr. Ranieri who responded to
 23 it by agreeing that Mr. Silva be murdered; and Mr. Ranieri's substantial purpose in doing so was
 24 to preserve his "status within" the HASC. *Op.*, p. 27; pp.16-27.

1 Mr. Ranieri's motion should be granted despite the Government's claims.

2 First, §1959(a) "itself contains no indication that Congress intended it to make gang
 3 membership a status offense such that mere membership plus proof of a criminal act would be
 4 sufficient to prove a ... violation. Otherwise, every traffic altercation or act of domestic violence,
 5 when committed by a gang member, could be prosecuted under [Section 1959(a)] as well."

6 *United States v. Banks*, 514 F.3d 959, 968 (9th Cir. 2008). In short, "[b]y limiting the statute's
 7 scope to those cases in which the jury finds that one of the defendant's general purposes or
 8 dominant purposes was to enhance his status or that the violent act was committed 'as an integral
 9 aspect' of gang membership, [courts] ensure that the statute is given its full scope, without
 10 allowing it to be used to turn every criminal act by a gang member into a federal crime." *Id.* at
 11 969-70 (footnote omitted). Here, as discussed above, the evidence is insufficient to support a
 12 reasonable inference that Mr. Ranieri was or aspired to become a member of the charged
 13 enterprise.

14 Second, although one's connections to and acts relating to a charged enterprise may be
 15 pertinent in assessing the sufficiency of evidence relating to one's "purposes" under §1959(a),
 16 courts which have found evidence to be sufficient on this point are premised on the fact that the
 17 charged defendants participated directly and considerably in the criminal affairs of the charged
 18 enterprises. See, e.g., *Fernandez* and *Rodriguez*. That is not the case here as will be discussed
 19 below.

20 Third, mere association with an enterprise does not constitute an actionable §1962(d)
 21 violation. *Baumer v. Pachl*, 8 F.3d 1341, 1346 (9th Cir. 1993). In a RICO conspiracy, as in all
 22 conspiracies, agreement is essential. *Id.* (citing *United States v. Neapolitan*, 791 F.2d 489, 499
 23 (7th Cir.), cert. denied, 479 U.S. 940 (1986).

1 Fourth, the Government notes that Mr. Ranieri's "....connection with HASC is
 2 longstanding, to at least 2008." *Op.*, p. 16. What is telling in view of that fact is the evidence at
 3 trial demonstrates that his ties to the HASC consists of his socializing with members of it. Thus,
 4 assessing the totality of the evidence at trial demonstrates that it is insufficient to show that he
 5 was a culpable member in or associate of the charged enterprise for VICAR purposes.
 6

7 For instance, there was no evidence Mr. Ranieri had a role or participated in or facilitated
 8 or encouraged or had knowledge of any unlawful enterprise-related criminal activities until June
 9 2014 when it is alleged he conspired to murder Mr. Silva. Even former HASC members and
 10 associates and law enforcement agents presented by the Government did not testify or offer
 11 evidence that he was culpably associated with the charged enterprise aside from the allegations
 12 that he conspired to murder Mr. Silva.³ Also, there is no evidence that he ever lived in
 13 California or any place other than Massachusetts. If he had lived in California, that may have
 14 strengthened his connections to the charged enterprise - although not in a culpable manner, but
 15 he did not. Likewise, although he visited California, the evidence shows that his visits there
 16 were irregular and infrequent. Furthermore, there is no evidence that he was a member of the
 17
 18

20
 21 ³ In addressing Mr. Ranieri "status within" the HASC, the Government apparently attributes
 22 some significance to a conversation Russell Lyles and Raymond Foakes had on a recorded jail
 23 call during which they discussed the fact "Manny from Boston" had been arrested along with Mr.
 24 Lyles' at a marijuana growing site in Willetts, California in June 2008. During that conversation
 25 Mr. Foakes stated he discussed Manny's case with Mr. Ranieri who wished to help secure bail
 26 for Manny. *Op.*, p. 16. The Government, however, does not tell us in its *Opposition* that at trial
 27 the evidence showed that Manny was not charged with any crime related to that marijuana grow
 28 site, R.T. 1937-38; nor that the parties stipulated at trial that neither Manny or Mr. Ranieri were
 charged with any crime related to that grow site and neither were identified as Mr. Lyles' co-
 conspirators or unindicted co-conspirators relating to the prosecution of Mr. Lyles relating to
 that grow site. R.T. 6516. Hence, evidence of this phone conversation does not support a
 reasonable inference from which a rational juror could conclude that Mr. Ranieri was a culpable
 member in or associate of the charged enterprise for VICAR and RICO conspiracy purposes.

1 HASC, ever held an office in it, attended one of its “church” meetings, voted on any of its
 2 charter business, followed the progress of any criminal proceedings or potential criminal
 3 liabilities against its members, attended any of its runs, aided or facilitated any of its affairs,
 4 aided any of its incarcerated members or received any benefits from its non-criminal or criminal
 5 activities.

6
 7 Also, the Government contends testimony from Mariano Malvino, Stacy Silva, Brittany
 8 Tolman and Steven Verhagen supports an inference that Mr. Ranieri had high “status” or
 9 “position in the club”. *Op.* , pp. 16-19. Mr. Malvino, for example, who met Mr. Ranieri only
 10 once, simply testified: “Q. Were you able to see how Rainman behaved, how he carried himself?
 11 A. He just looked like a bad – a bad motherfucker. Excuse my language.” RT 1100-01.” *Op.* , p.
 12 16. Also, Ms. Silva simply testified that she once heard her husband state the name “Rainman”
 13 with respect. *Id.*, p. 17; R.T. 3193. Similarly, Brittany Tolman testified that Mr. Ranieri “... was
 14 just, I feel like, a normal houseguest. They [Lyles and Ranieri] were so excited to see each other.
 15 JR also thought the world of Rain as well. He talked about his kids a lot and seemed very,
 16 excited to see each other.... “. *Id.*, pp.17-18. The Government simply overstates this evidence in
 17 suggesting its strained inference on status. This evidence, as well as that of Mr. Verhagen’s and
 18 Mr. Conte’s testimony, does not support a reasonable inference that Mr. Ranieri was a culpable
 19 member in the charged enterprise for VICAR principles. Indeed, the testimony of Ms. Tolman in
 20 particular instead establishes the social nature of Mr. Ranieri’s relationships with members of the
 21 Sonoma County Hells Angels.

22
 23 The Government next maintains that Mr. Ranieri’s “status within” the charged enterprise,
 24 and, thus, his VICAR purposes to support his conviction, can be inferred from evidence of
 25 plaques, posters, and other Hells Angels materials honoring Mr. Ranieri at the HASC clubhouse

1 and materials there from Boston honoring HASC members, *Op.*, p. 19; as well as from evidence
2 he at times wore a Sonoma patch and had a Sonoma tattoo on his arm. *Id.*, 24-26.

3 Notwithstanding the Government's claim, this evidence instead demonstrates his social, non-
4 culpable relations with the Sonoma County chapter of the Hells Angels and it members. As the
5 Government's gang expert Jeremy Scheetz testified as to a photo of Mr. Ranieri depicted
6 wearing a "cut" with a Sonoma tag or patch on it, :

7 Q. And if there is a charter name, such as Sonoma, do you expect that to be
8 worn by the members of that charter?

9 A. Yes and no; but as you can see, Mr. Ranieri is not a member of Sonoma,
10 but he is wearing that Sonoma County.

11 **Q. So what does it mean when a member of a different charter wears a
12 location tag from a different charter?**

13 **A. It's the exact same thing as the side rocker. It's just a friendship thing.**

14 R.T.: 2500.

15 Here, even viewing this evidence in the light most favorable to the Government, this
16 circumstantial evidence gives equal or nearly equal support to a theory of guilt and a theory of
17 innocence, and, accordingly, a reasonable jury must necessarily entertain a reasonable doubt.

18 *Landesman*, 17 F.4th, at p. 320. Accordingly, this circumstantial evidence is insufficient to show
19 that Mr. Ranieri was a culpable member or associate of or had "high status" in the charged
20 enterprise for VICAR purposes.

21 The Government next asserts that Mr. Ranieri's "... prominent display of his status as
22 among the "Filthy Few" also supports his high status within HASC, because that tag indicated
23 one committed violence on behalf of the Hells Angels." *Op.*, p. 22; pp. 22-24. However, no
24 evidence at trial supports a reasonable inference he perceived that he needed to resort or resorted
25 to violence in response to all acts of disrespect regardless of whether it was directed at him or
26

1 Mr. Sweeney. Furthermore, no trial evidence supports a reasonable inference he perceived he
 2 must resort to or resorted to violence viz-a-viz the affairs of the charged enterprise in order to
 3 maintain his non-position in it or to further its objectives. Moreover, the Government concedes
 4 that any violent act he committed as purportedly indicated by his “Filthy Few” “display”, of
 5 which there is no evidence thereof at trial, was done on behalf of the Hells Angels and *not the*
 6 *charged enterprise*. Consequently, this evidence does not establish a reasonable inference that
 7 he was a culpable member in, associate of, or had high status in the charged enterprise for
 8 VICAR purposes.

11 Fifth, the evidence is insufficient to show that Mr. Ranieri was a culpable member in,
 12 associate of or had “status” in the charged enterprise for VICAR purposes insofar as there was no
 13 evidence that he was a sergeant-at-arms in any chapter, and he conspired to murder Mr. Silva in
 14 that role to enforce HASC rules. Nor is there any evidence that he planned, participated in,
 15 facilitated, or recruited others to murder Mr. Silva; or bragged or used Mr. Silva’s murder to
 16 bolster his reputation or facilitate the commission of other crimes. Nor is there any evidence that
 17 he felt disrespected by Mr. Silva’s alleged threat against Mr. Sweeney as *an associate of the*
 18 *charged enterprise* or feared failing to violently respond to it *would affect his standing or*
 19 *position in the charged enterprise---one with which he had no culpable standing or position in or*
 20 *relationship to.*

23 Finally, Mr. Ranieri’s conviction based of his substantial purpose in conspiring to murder
 24 Mr. Silva being to preserve his “status within” the HASC cannot be affirmed on the trial record
 25 because the inferences required to do so are unreasonable, strained, speculative and specious.
 26 They are no more than guess work. Also, the evidence totally fails to support an inference as to
 27 the essential elements of the plain language of this §1959(a) charge and settled authority. While

1 one's §1959 conviction may be affirmed if a motivation or purpose to maintain or increase one's
 2 position can be reasonably inferred from the evidence, that is not the case here and his conviction
 3 cannot be sustained.
 4

5 **3. The Evidence Based on The Testimony of Joseph Hardisty is**
6 Insufficient to Support Mr. Ranieri's Conviction That He
7 Conspired to Murder Joel Silva in Aid of Racketeering

8 The Government asserts that Mr. Ranieri's conviction of the VICAR conspiracy to
 9 murder Mr. Silva is supported by sufficient evidence as established by the testimony of Mr.
 10 Hardisty. *Op.*, pp. 6-8. It maintains that “[t]here is no question that Hardisty implicated Ranieri
 11 in his testimony.” *Id.*, p. 7. Mr. Ranieri's motion should be granted regardless of the
 12 Government's claims because the evidence based on Mr. Hardisty's testimony is insufficient to
 13 support Mr. Ranieri's conviction that he conspired to murder Mr. Silva in aid of racketeering.
 14

15 At the outset, at this stage it is critical that the trial evidence be viewed in its totality.
 16 *United States v. Glenn* 312 F.3d 58, 69 (2d Cir. 2002).

17 Here, the inferences of Mr. Ranieri's guilt the Government seeks to draw based on Mr.
 18 Hardisty's testimony are undermined by other aspects of his own testimony as well as others'
 19 testimony and evidence offered by the Government.

20 First, at trial Mr. Hardisty testified that Mr. Silva and he traveled from either Oakland or
 21 San Francisco to Boston, or Manchester, New Hampshire, to attend a motorcycle rally in
 22 Laconia, New Hampshire. R.T.: 3918. When they arrived in Boston they first went to Mr.
 23 Ranieri's home in Lynn, Massachusetts, and then, perhaps, the “clubhouse”. R.T.: 3918, 3920.⁴
 24 They entered Mr. Ranieri's house, and later left, along with “members from Fresno”, and drove
 25 to Laconia. R.T.: 3919-22.
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⁴ The Salem/Lynn “clubhouse” was also located in Lynn. R.T.: 5711

1 The Government offered call details records for Mr. Silva's cell phone records along with
 2 those of others' targeted cell phones into evidence. (GX: 128-130, 132-138 and 143; GX-
 3 127). It also offered a voluminous CSLI report by F.B.I. Special Agent Meredith Stanger, its
 4 CSLI expert, which included her mapping of the targeted phones identified in her
 5 Report into evidence. (GX-127; RT: 3485).

6 S.A. Stanger testified that she analyzed Mr. Silva's CDRs to determine his travel
 7 throughout the month of June 2014 - a timeframe during which his CDRs indicated his phone
 8 was on the East Coast. R.T.: 3556. *See also*, R.T.: 3560. As for the mapping in her report, she
 9 collaborated with the prosecution team in deciding what CSLI information to depict in the maps
 10 in her report, i.e., GX-127. R.T.: 3547-48. In her overall analysis, however, she mapped cell
 11 location information of all Mr. Silva's cell phone records to determine his locations during the
 12 period covered by those records. RT: 3555-56.⁵ She did not map all of the locations arising from
 13 his CDRs for the entire period covered by them but instead focused on time frames "necessary"
 14 for the analysis and maps depicted in her report. R.T.: 3555-56. Nevertheless, she examined all
 15 the travel-related information she extrapolated from his CDRs but did not depict or map all of
 16 that information in her report, i.e., GX-127. R.T.: 3557.

17 S.A. Stanger testified that after analyzing all of Mr. Silva's CDRs from June 1, 2014
 18 through August 15, 2014, she determined his cell site activity is not consistent with his ever
 19 being at Mr. Ranieri's home in Lynn from the time he arrived on the East Coast from California
 20 through the time he left the East Coast from the Manchester, New Hampshire Airport to
 21 California on June 16, 2014. R.T.: 3560.

22 ⁵ Those records encompass the period from June 1, 2014 through August 15, 2014. (GX-128)

1 Thus, inferences of Mr. Ranieri's guilt which the Government seeks to draw from Mr.
 2 Hardisty's testimony and CDRs and CSLI evidence are unreliable and unreasonable inasmuch as
 3 they are undermined by its own CAST expert and her analysis of Mr. Silva's CDRs. This
 4 evidence also rebuts its claims that S.A. Stanger's testimony and report "... squares with
 5 Hardisty's testimony on virtually every significant point." *Op.*, p. 8.

6
 7 Second, Mr. Hardisty testified that after Mr. Silva threatened Mr. Sweeney in New
 8 Hampshire, he, and Messrs. Wendt, Huff and Bueno, members from Fresno, drove directly to
 9 Mr. Ranieri's home in Lynn. RT: 3926-27. There, according to Mr. Hardisty, Messrs. Wendt and
 10 Ranieri had a private discussion in Mr. Ranieri's garage, RT: 3928; 3854, after which these men
 11 allegedly discussed this supposed threat including that something had to be done and that he, Mr.
 12 Silva, had to be killed.⁶ R.T.: 3855.

13
 14 However, TFO Menke testified that Mr. Hardisty did not mention or talk about this
 15 meeting at Mr. Ranieri's home during his interviews with Mr. Hardisty in June and July 2016.
 16 R.T.: 4930; 4932. Also, S.A. Stanger testified that if Messrs. Wendt and Huff were standing
 17 together when that meeting allegedly occurred, they would have been in the vicinity of the Salem
 18 Clubhouse not Mr. Ranieri's residence, R.T.: 3552-53. Neither she nor her report, GX-127,
 19 offered evidence that Messrs. Wendt's, Huff's, and Bueno's cell phones were near Mr. Ranieri's
 20 home on that day not, or as the Government now contends "...in the vicinity of..." his home.
 21 Furthermore, Mr. Hardisty did not testify that he and those three men were ever separated from
 22 one another during that time and there was no evidence that supports such an inference.

23
 24 Consequently, again, inferences of Mr. Ranieri's guilt based on Mr. Hardisty's testimony
 25 are undercut by both TFO Menke's testimony and S.A. Stanger's testimony, and Messrs.
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 6 Mr. Hardisty also testified this was not explicitly stated but was his understanding. R.T.: 3855

1 Wendt's, Huff's, and Bueno's CDRs and her analysis thereof. Again, her testimony and those
 2 CDRs, refute the Government's assertions that her testimony and report "... squares with Mr.
 3 Hardisty's testimony on virtually every significant point." *Op.*, p. 8.
 4

5 Third, Mr. Hardisty testified that the impetus for the alleged VICAR conspiracy to
 6 murder Mr. Silva was his threat in Laconia to kill Mr. Sweeney. R.T.: 3850. According to Mr.
 7 Hardisty, Mr. Silva made this threat because he was angry that Mr. Sweeney had given a gold
 8 neck chain to a prospect, and *Mr. Silva saw that prospect wearing it in Laconia.* RT: 3897-98;
 9 3900; 3902-03. Mr. Hardisty recalled he had also testified to that effect before the Grand Jury.
 10 RT: 3900.
 11

12 On cross-examination, Mr. Hardisty testified that in June and July of 2016 he told TFO
 13 Menke this chain was the centerpiece of a dispute between Mr. Silva and Mr. Sweeney, but their
 14 dispute occurred at the Salem clubhouse in Massachusetts. RT: 3904-05. TFO Menke testified
 15 Mr. Hardisty stated that Mr. Sweeney and Mr. Silva had an altercation because *Mr. Silva saw*
 16 *Mr. Sweeney wearing this chain.* RT: 4728. *Mr. Hardisty also testified on cross-examination that*
 17 *he – neither a prospect nor Mr. Sweeney – was wearing this chain when he came to Boston and*
 18 *Laconia with Mr. Silva in 2014.* RT: 3908, 3810.
 19

20 Mr. Hardisty's testimony on this point, undermined by TFO Menke's testimony, is also
 21 so inconsistent and improbable on its face that no reasonable fact finder could accept it, and it
 22 does not support a rational inference that the impetus for Mr. Silva to threaten to kill Mr.
 23 Sweeney and, hence, Mr. Ranieri's motive for conspiring to murder Mr. Silva. This evidence,
 24 therefore, is insufficient to sustain Mr. Ranieri's conviction that he conspired to murder Mr.
 25 Silva. *See, United States v. Croft*, 124 F.3d 1109, 1125 (9th Cir. 1997); *United States v. Tam*, 240
 26
 27

1 F.3d 797 (9th Cir. 2001); *United States v. Williams*, No. CR 13-0764 WHO, 2018 WL 2724337,
 2 at *7 (N.D. Cal. Jun. 6, 2018).

3 Fourth, the Government asserts that Mr. Ranieri's conviction is also supported by
 4 sufficient evidence based on Mr. Hardisty's testimony that after Mr. Silva was murdered, he, Mr.
 5 Hardisty, met with Mr. Ranieri "... during a party at the Fresno clubhouse, and they discussed
 6 that killing once again." *Op.*, p. 8. Mr. Hardisty first made this claim during cross-examination
 7 at trial. By then he had been cooperating with law enforcement since May 2016. From that point
 8 to the time he first made this claim at trial, the record shows he had been interviewed several
 9 times by the Government; communicated frequently with his handlers; and prepared himself,
 10 with the Government's help, for his Grand Jury testimony, his Group One trial testimony, and
 11 Mr. Ranieri's trial. Yet it took him almost seven years - over approximately 2,444 days, more
 12 than 58,000 hours - to make this claim. His testimony in this regard is unreliable and specious
 13 and also so improbable on its face that no reasonable fact finder could accept it. Consequently, it
 14 does not support a rational inference that Mr. Ranieri agreed to murder Mr. Silva. Thus, it is
 15 insufficient to sustain Mr. Ranieri's conviction. See, *Croft*, 124 F.3d at 1125 (9th Cir. 1997);
 16 *Tam*, 240 F.3d 797 (9th Cir. 2001); *Williams*, No. CR 13-0764 WHO, 2018 WL 2724337, at *7
 17 (N.D. Cal. Jun. 6, 2018).

22 Finally, although Mr. Hardisty provided evidence of a plan to conduct Mr. Silva's murder
 23 "... as well as details of the killing itself...", *Op.*, p. 8, this evidence is insufficient to sustain Mr.
 24 Ranieri's conviction that he conspired to murder Mr. Silva insofar as it does not implicate him in
 25 that claimed plan and murder, and there is no evidence he facilitated that plan or murder or the
 26 acts of witness intimidation, arson and obstruction of justice related thereto.

1 For the foregoing reasons, Mr. Ranieri's motion should be granted because the evidence
 2 based on Mr. Hardisty's testimony is insufficient to support his conviction since it is undermined
 3 by his own testimony, others' testimony and evidence offered by the Government, and aspects of
 4 his testimony are so inconsistent or improbable on its face that no reasonable fact finder could
 5 accept it.

7 **4. The "Additional Evidence" Offered by The Government is**
 8 **Insufficient to Support Mr. Ranieri's Conviction That He**
 9 **Conspired to Murder Joel Silva in Aid of Racketeering**

10 The Government contends the record is otherwise replete with evidence which
 11 "...completely supports the details that Hardisty provided...", *Op.* p.8. It asserts this evidence
 12 consists of CAST evidence, *Id.*, pp. 8-9; CDRs that show "a high volume of communications
 13 between Ranieri and Nelson and Ranieri and Wendt on the day Silva was killed" *Id.*, pp. 9-12;
 14 witness testimony that purportedly supports both Mr. Hardisty's testimony and Mr. Ranieri's
 15 liability for Silva's death, *Id.*, pp. 12-15; that Mr. Ranieri left a Filthy Few patch at the Sonoma
 16 Clubhouse after a party in 2015, *Id.* p. 15; and, testimony that Mr. Silva threatened Mr. Sweeney
 17 because he was proud to have had the "81" pendant or chain and was angry towards Mr.
 18 Sweeney when he no longer had it. *Id.*, p. 16.

19 First, CAST evidence at trial indicates that Messrs. Nelson and Wendt were in Lynn in
 20 July 2014. According to that evidence Mr. Nelson was in Lynn and Boston between July 11 and
 21 13, 2014, and Mr. Wendt was in Lynn between July 12 and 14, 2014. R.T.: 3504. The
 22 Government's sought-after inference is that during this time these men communicated with Mr.
 23 Ranieri about an agreement or plan to kill Mr. Silva. *Op.*, p. 9.

24 The fact that Messrs. Nelson and Wendt were in Lynn during that time is by itself
 25 insufficient to establish Mr. Ranieri's agreement to murder Mr. Silva or his knowledge of his

1 murder. Particularly given the evidence that Messrs. Wendt and Nelson were in Lynn to
 2 celebrate the forty-fifth anniversary members-only party in Lynn during that period. R.T.: 5710-
 3 55. Furthermore, the Government's desired inference is dependent on Mr. Hardisty's testimony
 4 which, as discussed in the immediately foregoing sub-section is undermined and is so
 5 inconsistent or improbable on its face that no reasonable fact finder could accept it.
 6 Consequently, this evidence is insufficient to support Mr. Ranieri's conviction.

7 Second, the circumstantial CDR evidence that shows "a high volume of communications
 8 between Ranieri and Nelson and Ranieri and Wendt on the day Silva was killed", *Op.*, pp. 9-12,
 9 is insufficient to establish Mr. Ranieri's agreement to murder Mr. Silva or his knowledge of his
 10 murder. For instance, the communications between Messrs. Ranieri, Nelson and Wendt are less
 11 frequent and lengthy compared to those by and between Messrs. Wendt, Nelson, Silva,
 12 Hefferman, Huff and by and between Messrs. Hardisty and Silva. *See*, GX 127-130; GX 132-
 13 138; GX-143. Also, a reasonable inference from this evidence is that Messrs. Ranieri and
 14 Nelson and Messrs. Ranieri and Wendt were communicating about their having attended the
 15 Salem's charter's forty-fifth anniversary members-only party in Lynn. Moreover, again the
 16 Government's preferred inference is conditioned on Mr. Hardisty's testimony which, as
 17 discussed in the directly foregoing sub-section is undercut and so inconsistent or implausible on
 18 its face that no reasonable fact finder could accept it. Therefore, this evidence viewed in the
 19 context of the totality of the trial evidence is insufficient to support Mr. Ranieri's conviction.

20 Third, the Government asserts Mr. Ranieri left a Filthy Few patch at the Sonoma
 21 Clubhouse after a party in 2015 and suggests a rational juror could therefore infer he conspired to
 22 murder Mr. Silva in aid of racketeering because he left that patch as a token of appreciation for
 23 Mr. Silva's murder. *Op.*, p. 15. However, the Government concedes that the witness who

1 testified to this alleged fact, Steven Verhagen, “... did not link this event with the Silva
 2 killing,...” *Id.* There is no other evidence on this point. Hence, viewed in the framework of the
 3 totality of the trial evidence this evidence is insufficient to support a reasonable inference that
 4 Mr. Ranieri conspired to murder Mr. Silva or his knowledge of the murder of him.
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6 Fourth, the Government contends that the testimony of Stacy Silva, Stevie Silva,
 7 Brittany Tolman, and Ann and Johnnie Crail supports Mr. Hardisty’s testimony and Mr.
 8 Ranieri’s conviction. *Op.*, pp. 12-15. The Government plainly overstates this evidence in
 9 suggesting these inferences. This evidence does not implicate Mr. Ranieri as a culpable member
 10 in the charged enterprise for VICAR or RICO conspiracy principles. This evidence does not
 11 corroborate Mr. Hardisty’s testimony as it pertains to Mr. Ranieri. This evidence does not rebut
 12 that fact, as discussed above, that Mr. Hardisty’s testimony as it concerns Mr. Ranieri For the
 13 foregoing reasons, Mr. Ranieri’s motion should be granted because the evidence based on Mr.
 14 Hardisty’s testimony is insufficient to support his conviction since it is undercut by his own
 15 testimony, others’ testimony and evidence offered by the Government, and aspects of his
 16 testimony are so inconsistent or improbable on its face that no reasonable fact finder could
 17 accept it. The testimonial evidence from these witnesses viewed in the context of the totality of
 18 the trial evidence is insufficient to support a reasonable inference that Mr. Ranieri conspired to
 19 murder Mr. Silva or his knowledge of the murder of him.
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21 Fifth, in Section II.B.3 above, Mr. Ranieri addresses the significance of evidence relating
 22 to chain or pendant as an impetus for Mr. Silva’s threat to kill Mr. Sweeney, and, hence, Mr.
 23 Ranieri motive to conspire to murder Mr. Silva in the context of demonstrating that Mr.
 24 Hardisty’s testimony is undermined by other aspects of his own testimony as well as others’
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1 testimony and evidence offered by the Government. Here, Mr. Ranieri refers the Court to his
 2 points in Section II.B.3 above.

3 Finally, although the Government does not raise this point in its *Opposition*, it did not
 4 offer any evidence at trial to corroborate Mr. Hardisty's account as to what happened on the East
 5 Coast in June 2014. There are, for instance, no call detail records, photographs, cell-phone
 6 photographs, airline tickets, travel itineraries, flight records, car rental information, credit card
 7 receipts, cancelled checks, money order receipts or historical cell data location information that
 8 corroborates that he traveled from the West Coast to East Coast in 2014 as he claims, or which
 9 corroborate his claims as to what occurred while he was there, or of his being at Mr. Ranieri's
 10 home on two occasions in June 2014, or of his account that Mr. Ranieri conspired to murder Mr.
 11 Silva.

12 For the foregoing reasons, in view of the totality of the trial evidence, the evidence is
 13 insufficient to support a reasonable inference that Mr. Ranieri conspired to murder Mr. Silva or
 14 his knowledge of the murder of him.

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19 **C. The Evidence is Insufficient to Support Mr. Ranieri's Racketeering**
 20 **Conspiracy Conviction Under 18 U.S.C. §1962(d)**

21 The Government claims Mr. Ranieri's conviction for RICO conspiracy is supported by
 22 sufficient evidence because he participated in or agreed to the commission of racketeering acts
 23 "associated with" Mr. Silva's homicide, and, aside from those acts, since he knew of other
 24 racketeering acts involving the charged enterprise and agreed that its members and associates
 25 would commit them. *Op.*, pp.27-33. The Court should nonetheless grant Mr. Ranieri's motion
 26 because, as discussed below, the evidence is insufficient to sustain his conviction the he
 27

1 knowingly agreed to participate in the affairs of the charged enterprise through a pattern of
 2 racketeering.

3

4 **1. The Evidence is Insufficient to Support Mr. Ranieri's Racketeering**
5 Conviction Based on The Acts Associated With Mr. Silva's Murder
6 Because Those Acts Do Not Amount to Continued Criminal Activity
7 Under 18 U.S.C. §1962(d)

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9 The Government asserts that Mr. Ranieri's conviction for RICO conspiracy is supported
 10 by sufficient evidence because he participated in or agreed to racketeering acts "associated with"
 11 Mr. Silva's homicide. *Op.*, pp.27-28. It maintains the evidence at trial showed he "...was deeply
 12 involved in the VICAR murder conspiracy....[which] demonstrates his agreement to a pattern of
 13 racketeering activity because the events of the Silva murder encompass a host of racketeering
 14 acts: murder; conspiracy to commit murder; witness intimidation; arson; and obstruction of
 15 justice"; as he put the conspiracy in motion when he and Wendt agreed in June 2014 that Silva
 16 "had to go."; and, that his role continued because CDRs show frequent communication between
 17 he and Mr. Wendt and he and Mr. Nelson in the hours leading up to Mr. Silva's murder. *Op.*, pp.
 18 27-28.

19 Mr. Ranieri's motion should be granted despite the Government's claims.

20 To support Mr. Ranieri's conviction for a violation of 18 U.S.C. §1962(d), the
 21 Government must show and the evidence must support that he knowingly agreed "to participate,
 22 directly or indirectly, in the conduct of the [enterprise's] affairs through a pattern of
 23 racketeering." *United States v. Jaimez*, 45 F.4th 1118, 1129 (9th Cir. 2022), *cert. denied*, 143 S.
 24 Ct. 1038 (2023).

25 The Supreme Court, in *H.J., Inc. v. Northwestern Bell Telephone Co.*, held that this
 26 element requires that a prosecutor show both "that the racketeering predicates are related, and
 27 that they amount to or pose a threat of continued criminal activity." 492 U.S. 229, 239 (1989).

1 *See also*, 18 U.S.C. § 1951(5). The continuity requirement stems from Congress's concern "in
 2 RICO with long-term criminal conduct." *Id.* at 242. *H.J., Inc.* states that 'continuity' may refer
 3 to either a closed-ended or an open-ended period. *Id.* at 241. This case must be evaluated under
 4 the closed-ended concept because it involves a closed period of conduct given Mr. Ranieri's lack
 5 of culpable connections to or involvement in the charged enterprise until the alleged conspiracy
 6 to murder Mr. Silva in June 2014 and his murder in July 2014 as discussed in Section II. B.
 7 above. Sufficient proof of continuity over a closed period may be demonstrated "by providing a
 8 series of related predicates extending over a substantial period of time". *Id.*
 9

10 However, "[p]redicate acts extending over a few weeks or months and threatening no
 11 criminal conduct do not satisfy this requirement." *H.J., Inc.* 492 U.S. at 242. *See also, Allwaste,
 12 Inc. v. Hecht*, 65 F.3d 1523, 1528 (9th Cir.1995) (thirteen months could demonstrate a
 13 "substantial period of time" to satisfy the continuity requirement); *United States v. Freeman*, 6
 14 F.3d 586, 596 (9th Cir. 1993) (two years). Here, the evidence is insufficient to sustain Mr.
 15 Ranieri's conviction that he knowingly agreed to participate in the affairs of the charged
 16 enterprise through a pattern of racketeering premised on the acts associated with Mr. Silva's
 17 homicide, i.e., a conspiracy to murder Mr. Silva, his murder and the acts of obstruction of justice,
 18 because all of those all occurred over a period of thirty-days. His present motion should,
 19 therefore, be granted.⁷

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 27 ⁷ On the issue of the sufficiency of proof of a pattern of racketeering activity, Mr. Ranieri
 28 suggests that he also cannot be convicted on the basis that the acts relating to Mr. Silva's murder
 constitute a sufficient pattern insofar as this case involves one conspiracy to murder and one
 murder and, consequently, is distinct from *United States v. Houston*, 648 F.3d 806 (9th Cir.
 2011) and *United States v. Rodriguez*, 971 F.3d 1005 (9th Cir., 2020).

2. The Evidence is Insufficient to Support Mr. Ranieri's Racketeering Conviction Based on Acts Not Associated With Mr. Silva's Murder

The Government next claims Mr. Ranieri's conviction for RICO conspiracy is supported by sufficient evidence because he was aware of other racketeering acts involving the charged enterprise and agreed that its members and associates would commit them. *Op.*, p. 28. It asserts these acts consist of the "...murder of rivals; witness intimidation and obstruction of justice; and drug trafficking." *Id.* The Court should grant Mr. Ranieri's motion despite these claims because that evidence is insufficient to sustain his conviction that he knowingly agreed to participate in the affairs of the charged enterprise through a pattern of racketeering.

First, the evidence is insufficient to sustain Mr. Ranieri’s conviction that he knowingly agreed that the pattern of racketeering of the charged enterprise would encompass an agreement to murder rivals. Initially, the record is devoid of evidence that he participated in, contemplated, planned, facilitated, furthered or was aware or agreed any member of charged enterprise might engage in, or committed, the murder of a purported rival. Nor is there any evidence that he encouraged, rewarded, or provided weapons to any member of the enterprise who might engage in, or committed, the murder of a rival. Nor is there any evidence that he knew of any member who murdered a rival. Nor is there any evidence that he went on any runs or had any encounters with members of the enterprise during which they confronted and agreed to murder, or murdered, a rival. Furthermore, consistent with *People v. Ware*, 14 Cal. 5th 151 (2022), which the *Superseding Indictment* in pertinent part incorporates as the basis of his potential liability under this so-called “rivals conspiracy”, the Court instructed the jury that racketeering activity involving a conspiracy to commit murder requires evidence that:

one intended to agree, and did agree, with one or more people to intentionally and unlawfully kill; ... at the time of the agreement, one or

1 more of the other members of the conspiracy intended that one or more of
2 them would intentionally and unlawfully kill; ... one or more members of
3 the conspiracy committed at least one overt act in accomplishing the
4 killing; and, ... at least one of the overt acts was committed in California.

5 An overt act is an act by one or more members of the conspiracy that is done
6 to help accomplish the agreed-upon crime. The overt act must happen after
7 the defendant has agreed to commit the crime. The overt act must be more
8 than the act of agreeing or planning to commit the crime, but it does not have
9 to be the criminal act itself.

10 R.T.: 6599-600.

11 Here, however, there is no evidence which supports an inference that Mr. Ranieri or any
12 member of the enterprise conspired to murder a rival under California law. For the foregoing
13 reasons, this evidence is insufficient to support Mr. Ranieri's conviction that he knowingly
14 agreed that the pattern of racketeering of the charged enterprise would encompass an agreement
15 to murder rivals.

16 Second, although witness intimidation may constitute a predicate act of racketeering
17 activity, the evidence is insufficient to uphold Mr. Ranieri's conviction that he intentionally
18 agreed or was aware that the pattern of racketeering of the charged enterprise would involve acts
19 of witness intimidation. There is no evidence in the record from which one can reasonably infer
20 that he participated in, contemplated, planned, facilitated, furthered, agreed, knew of,
21 encouraged, or rewarded a member of charged enterprise who might or did engage in such acts.
22 There is no evidence that he encouraged or rewarded any such conduct. This lack of evidence
23 includes the purported acts of intimidation of Javad Trew, Mr. Malvino, Jamie King, and Levi
24 Phipps the Government lists in its *Opposition* at pp. 32-33. Likewise for the alleged
25 intimidation acts involving Mr. Foakes and Brian Burke against Michelle Conte. Furthermore,
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1 the latter alleged act by Mr. Burke cannot serve as a reasonable negative inference against Mr.
 2 Ranieri insofar as Mr. Burke was acquitted on this charge.

3 Third, the evidence is insufficient to support Mr. Ranieri's conviction that he knowingly
 4 agreed that the pattern of racketeering of the charged enterprise included an agreement involving
 5 drug trafficking. There is no evidence in the record that he participated in, contemplated,
 6 planned, facilitated, furthered, or knew or agreed that any member of the charged enterprise
 7 might or did engage in drug trafficking. Nor is there any evidence that he encouraged, rewarded,
 8 or benefitted from anyone who might or did engage in such conduct.

9 Here, the Government first suggests the June 2008 jail call between Messrs. Foakes and
 10 Lyles demonstrates that Mr. Ranieri knew the enterprise engaged in marijuana cultivation, and
 11 he continued to associate with the charter. As discussed in Footnote 3 above, Messrs. Foakes
 12 and Lyles then discussed that "Manny from Boston" had been arrested along with Mr. Lyles' at
 13 a marijuana growing site in Willetts in June 2008, and Mr. Foakes told Mr. Lyles he had
 14 discussed Manny's case with Mr. Ranieri who indicated that he wished to help obtain bail for
 15 Manny. The trial record shows Manny was not prosecuted with respect to that marijuana grow
 16 site, R.T. 1937-38; and the parties stipulated at trial that he and Mr. Ranieri were not charged
 17 with any crime related to that grow site and neither were identified as Mr. Lyles' co-conspirators
 18 or unindicted co-conspirators in a bill of particulars relating to Mr. Lyles' prosecution on charges
 19 related to that grow site. R.T. 6516. Therefore, the totality of the trial evidence on this point
 20 does not support a reasonable inference that Mr. Ranieri was a culpable member or associate of
 21 the charged enterprise for VICAR and RICO conspiracy purposes. .

22 The Government next suggests Steve Verhagen's testimony Mr. Ranieri was present at a
 23 party in Sonoma and drugs were "... out in the open at the party, ...is evidence of distribution of

1 controlled substances" , *Op.*, p. 33. This is a strained inference at best. Mr. Verhagen's
 2 testimony provides no evidence of the type or quantity of those drugs. It also does not offer any
 3 of the familiar indicia of drug trafficking such as packaging, bandings, marking, bags, scales, or
 4 money. Indeed, his testimony indicates those drugs were for the personal use of those who
 5 attended that party. R.T.: 1386-87. As with the rest of the trial record, his testimony does not
 6 demonstrate that Mr. Ranieri participated in, contemplated, planned, facilitated, furthered, or
 7 knew or agreed that any member of the charged enterprise who might or did engage in drug
 8 trafficking or encourage, reward or benefit from anyone who might or did engage in such
 9 conduct.

12 Finally, the Court should grant Mr. Ranieri's motion because the evidence of the
 13 foregoing acts of a "rivals conspiracy", witness intimidation, obstruction of justice, and drug
 14 trafficking is insufficient to sustain his conviction that he knowingly agreed to participate in the
 15 affairs of the charged enterprise through a pattern of racketeering.

18 III. CONCLUSION

19 Mr. Ranieri, for the foregoing reasons and for those in his Motions for Judgment of
 20 Acquittal, respectfully requests that the Court grant him relief and enter a judgment finding him
 21 not guilty of Counts One and Two of the *Superseding Indictment*.

24 December 6, 2023

25 Respectfully submitted,

26 By: /s/ John G. Walsh
 27 John G. Walsh
 28 Attorney for Defendant,
 CHRISTOPHER RANIERI